

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 7398

BILL NUMBER: HB 1454

NOTE PREPARED: Feb 7, 2011

BILL AMENDED:

SUBJECT: State Plan for Representation of Indigent Children.

FIRST AUTHOR: Rep. Crawford

BILL STATUS: As Introduced

FIRST SPONSOR:

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

- A. *Statutory Right to Counsel* – It establishes a statutory right to counsel for a child who is alleged or adjudicated to be a child in need of services or the subject of a parent-child termination proceeding.
- B. *Office of the State Juvenile Public Defender* – It establishes the Office of the State Juvenile Public Defender. It provides for representation of indigent children in cases filed in a juvenile court under a plan developed by the Office of the State Juvenile Public Defender and approved by the Supreme Court.
- C. It prohibits a child from waiving counsel unless certain criteria are met. It provides that if a child waives counsel, the court shall: (a) appoint standby counsel for the child; and (b) offer the child counsel at each later stage of a court proceeding.
- D. It provides for counties to distribute to the state the average net amount (after deducting certain reimbursements) that the counties spent for these services over a five-year period.
- E. It makes an appropriation.

Effective Date: Upon passage; July 1, 2011; January 1, 2012.

Explanation of State Expenditures: *Summary-* This bill is estimated to result in added expenditures between \$34 M and \$47 M annually.

Additional Details-

New Office of the Juvenile Public Defender – The added costs would depend on whether the state would hire new attorneys and support staff or contract out local attorneys to represent children in these cases. The salary of the State Juvenile Public Defender, the salaries of all support staff, and the costs of facilities to house the Office of the State Juvenile Public Defender will be paid from the state General Fund. These new expenditures would be at least partially offset by payments from counties based on their net expenditures from the previous five years for legal representation of juveniles in delinquency cases.

The Juvenile Public Defender's cost would include the following.

Estimated Costs of Juvenile Public Defender Office In \$ Millions			
	Low	High	Notes:
Central Office	\$1.30	\$1.30	Based on 2010 Public Defender Council Budget
Cost of Representing Juveniles	\$32.70	\$46.40	Based on 2009 filings and recommended caseload and staffing ratios of Public Defender Council
Dept. of Local Government Finance	\$0.04	\$0.04	Added staff to calculate costs
State Public Defender Office	unknown		Bill shifts post conviction cases from State Public Defender to Juvenile Public Defender
Net Costs	\$34.04	\$47.74	

Central Office Costs – These costs are based on the administrative costs of the Public Defender Council. The Public Defender Council has a nine-member staff composed of a director, four attorneys, and four administrative staff. The staff assists county public defender programs.

Cost of Representing Juveniles – To calculate the estimated costs of representing juveniles in delinquency, CHINS, and termination of parental rights cases, LSA uses the following two sources:

- Juvenile filings and juveniles represented by pauper attorneys or representing themselves in court from the *2009 Judicial Report* (37,917 for all delinquency, CHINS, and termination of parental rights cases and 27,052 for cases where the juveniles are either declared indigent or represent themselves in delinquency, CHINS, and termination of parental rights cases).
- Recommended staffing levels from the Public Defender Council (see table below).

Formula to Determine Staff Needed and Assumed Salaries		
<u>New Staff</u>	<u>Juvenile Caseload for Attorneys</u>	<u>Assumed Salary</u>
Attorneys		
Children in Need of Services	100	
Termination of Parental Rights	100	\$55,950
Delinquent	300	
<u>New Staff</u>	<u>Ratios of Staff to Attorneys</u>	<u>Assumed Salary</u>
Paralegals	1 to 4	\$28,000
Investigators	1 to 6	\$35,000
Law Clerks	1 to 2	\$55,950
Secretary	1 to 5	\$23,000

Effect on Department of Local Government Finance (DLGF): The requirements this bill places on the DLGF are expected to require an additional position with a starting salary and benefits of approximately \$44,000 per year. Under this bill, DLGF would determine the average annual expenditure for each county to provide legal representation to juvenile offenders and CHINS for a uniform, statewide 5-year period after deducting for the (1) amount received (or likely to be received) for the legal services from the Supplemental Public Defender Services Fund, (2) collections (or likely to be collected) for the legal services from parents, custodians, or guardians, or (3) amount received (or likely to be received) for the legal services from the federal government. The DLGF is also required to certify this amount to the county auditor, the State Budget Agency, the Treasurer of the State, and the State Juvenile Public Defender.

After December 31, 2011, on June and December of each year, a county is required to distribute to the Treasurer of State (for deposit in the General Fund) 50% of the certified amount calculated by DLGF for state reimbursement for juvenile legal services provided by the Juvenile Public Defender. For counties that fail to make the required payment, the Treasurer of State is to notify the State Budget Agency and the Auditor of State to withhold any amount of funds that the county normally receives through the state in an amount not to exceed the payment amount the county neglected to make.

Effect on the State Public Defender: The State Public Defender is a statutory office that provides legal assistance during post conviction appeals for adult offenders who are confined to Department of Correction (DOC) facilities or juveniles confined in DOC's juvenile facilities. All representation of juveniles who are confined as delinquents in DOC juvenile facilities will be shifted to the State Juvenile Public Defender. Any reductions in workload for this office are unknown.

Background on CHINS Cases – The following describes the general sequence of hearings and decisions that courts make after a child is removed from the home for allegations of abuse or neglect. Cases involving Children in Need of Services (CHINS) require determining whether children in certain households have been abused or neglected and whether they should be removed from the households in which they are living. The removal can be temporary or permanent.

The Indiana Department of Child Services caseworkers investigate whether children are neglected or abused and in some cases decide whether to immediately remove a child from a home or to report to an attorney in the office. Attorneys in the Department of Child Services examine the evidence and determine whether a petition should be filed in court to permanently remove the child from the home. The entire process takes roughly 15 months.

The following describes these hearings and decisions in more detail.

(1) Initial and Detention Hearing – DCS staff must show probable cause that the child is a child in need of services and that DCS should be permitted to keep the child in state custody. This hearing must be held within 48 hours of the time the child was taken into custody. Parents are served with a copy of the CHINS petition and the allegations of abuse or neglect. At this time, the parents can admit or deny the allegations and the court can determine whether the parents may have an attorney at county expense.

(2) Fact-finding Hearing – DCS and the parents present evidence at the hearing and cross-examine witnesses about the allegations of neglect or abuse. The court must decide whether the allegations presented by DCS have been proved by a preponderance of the evidence.

(3) Dispositional Hearing – If the court finds that a child is a child in need of services, the court within 30 days must determine the following: (a) alternatives for care treatment rehabilitation or placement of the child; (b) the appropriate role of the parent, guardian, or custodian; and (c) the financial responsibility of the parent or guardian for any services provided for the parent, guardian, or child.

(4) Progress Reports and Review Hearings – The court must review the status of the child at least every six months.

(5) Permanency Hearing – The court considers the intended permanent or long-term arrangements for care and custody of the child.

Explanation of State Revenues: The bill establishes that a parent or guardian of the estate of a child or a child who is the subject of a CHINS or juvenile delinquency case is financially responsible for legal services provided by the Juvenile Public Defender. The court may order payment of these expenses if at any time the court determines the child or parent or guardian of the child has sufficient financial means to pay for these legal representation costs. Any payments made to counties for the cost of services provided by the Juvenile Public Defender are required to be forwarded to the state for deposit in the General Fund.

County Reimbursement: It should be noted that the reimbursement amount provided by the counties will be based on the 5-year average annual expenditure of providing legal representation to juvenile offenders and CHINS for all counties. If the reimbursement amount calculated by DLGF is greater than the actual expenses of the State Juvenile Public Defender, state revenue will be greater than expenses for legal representation. However, in much the same manner, the reimbursement amount calculated by DLGF may be less than the actual expenses of the State Juvenile Public Defender. To this extent, state expenditures will increase.

Explanation of Local Expenditures: *Effect on GAL/CASA Program:* This bill may potentially reduce local expenditures if the Juvenile Public Defender represents children that otherwise would have received legal representation from either the local public defender, a Guardian Ad Litem (GAL), or a Court-Appointed Special Advocate (CASA). The average cost per child who receives GAL/CASA representation under the current system is approximately \$580 to \$800 annually. Total decreases in local expenditures are

indeterminable.

(See also *Explanation of State Revenues* regarding county reimbursement.)

(Revised) *Additional Information:* For FY 2011, the GAL program received an appropriation of \$2.97 M from the General Fund. As of December 2009, there were approximately 2,000 CHINS waiting for GAL/CASA representation.

Explanation of Local Revenues:

State Agencies Affected: Division of the State Court Administration, Indiana Supreme Court; DLGF; Treasurer of State.

Local Agencies Affected: All counties and local juvenile courts.

Information Sources: *2009 Indiana Judicial Report*; Amanda Stanley, DLGF; Leslie Dunn, Division of State Court Administration.

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